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IN THE

Supreme Court Of The United States

754

SEASIDE PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

STATE ROAD DEPARTMENT OF FLORIDA,
Appellee.

MOTION TO DISMISS

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IN THE

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SEASIDE PROPERTIES, INC., a Florida corporation,
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vs.

STATE ROAD DEPARTMENT OF FLORIDA,
Appellee.

MOTION TO DISMISS

INTRODUCTORY STATEMENT

Appellee in the above-entitled cause moves to Dismiss, on the grounds the Appeal does not present a substantial federal question and the non-federal grounds upon which the litigation below was decided were sufficient to support the Judgment rendered.

Initially, it is respectfully submitted, the opinion cited on page 1 of Appellant's brief bears an incorrect citation in that West Publishing Company, Publisher of Southern Reporter 2d series, has designated the citation as 190 So. 2d 391 rather than 392.

At 201 So. 2d 464 (Fla. 1967) Certiorari was denied by the Supreme Court of the State of Florida without opinion and on May 25, 1967, Rehearing was denied.

Appellant, in his brief appendix 12, cites *Seaside Properties, Inc. v. State Road Department* without naming it, to be found at 121 So. 2d at page 204 (D. C. A. 3, 1960), which case contained the colloquial allegations of a suit to quiet title against the State Road Department of Florida and Monroe County, a subdivision of the State of Florida, along with an alleged threat to remove certain display signs, which were placed by Seaside Properties, Inc. upon State Road right of way.

That latter case forms a part of the appendix herein.

JURISDICTION

Seaside Properties, Inc. filed its Amended Complaint in the Circuit Court in Monroe County against the State Road Department and Monroe County to quiet title to allegedly abandoned road right of way, which Seaside Properties, Inc. claimed and upon which they erected display signs.

The Chancellor in the Circuit Court, which is the trial Court, dismissed the Complaint. The basis for the dismissal was that there was no statutory authorization to sue the State Road Department and the County and, further, while there was a threat to remove display signs placed upon the roadway, the threat had not ripened into an actual physical invasion.

A federal issue was not raised or decided in that case, even though in 1960 when this case found its way into the jurisprudence of this state, such an issue might have been raised.

Appellant now therefore is precluded from urging a federal issue since that federal issue was not raised. *Safeway Stores v. Oklahoma Grocers,* 360 U. S. 334, 342, Note 7; *Whitney v. California,* 274 U. S. 357, 362-3; *Dewey v. Des Moines,* 173 U. S. 193, 197-8; *Wilson v. Cook,* 327 U. S. 474; *Adler v. Board of Education,* 342 U. S. 485, 496; *State Farm Mutual Insurance Company v. Duel,* 324 U. S. 154, 160-1.

Since the State Court Judgment was based upon non-federal grounds of lack of statutory authority to institute a suit to quiet title against the State Road Department and Monroe County and, since the District Court of Florida (Third District) held as a matter of fact there was no allegation of a physical taking, the only question is whether the non-federal grounds were adequate to support the State Court Judgment.

In that respect, *Seaside Properties, Inc. v. State Road Department,* 121 So. 2d 204 (D. C. A. 3, 1960), was not appealed and the Appellate Court allowed the present Appellant to continue with the litigation by merely modifying and affirming.

It is respectfully submitted therefore the non-federal grounds were adequate.

Turning now to *Seaside Properties, Inc. v. State Road Department* (190 So. 2d 391 D. C. A. 3, 1966) (201 So. 2d 464), nowhere is the federal question discussed or necessary to the

determination of the case since adequate non-federal grounds are apparent.

The non-federal grounds are apparently related to the alternative admittance on the part of Seaside Properties, Inc., that even if the State Road Department were the owner of the property in question by Statute (337.31(1), Florida Statutes) the State Road Department abandoned the roadway and Seaside Properties, Inc. acquired title by adverse possession.

The District Court held contra to Seaside Properties, Inc. contention and in its non-federal grounds opined there was no abandonment of the State Highway and, secondly, there may be no adverse possession against property held by the State Road Department for the use and benefit of the public.

Consider, if you will, the chaos that would result in highway law if, by mere occupation of portions of highways by individuals, title to such highways would vest in the individuals as against the public.

It is respectfully submitted the State Court Judgment here was based upon non-federal grounds and the non-federal grounds were adequate to support the action of the lower courts.

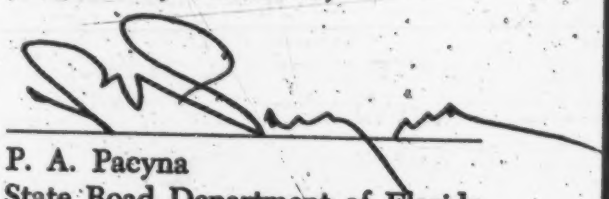
CONCLUSION

Appellee, State Road Department of Florida respectfully submits this case should be dismissed as there is a lack of a federal question, let alone a substantial federal question, and

the courts below rested their Judgments and Decisions upon adequate non-federal grounds.

This Court, it is respectfully submitted, should not assume jurisdiction herein.

Respectfully submitted,



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Counsel for the Appellee

PROOF OF SERVICE

STATE OF FLORIDA)
) SS.
COUNTY OF LEON)

I, P. A. PACYNA, attorney of record for the State Road Department of Florida, appellee herein, depose and say that on the 24 day of October, 1967, I served a copy of the foregoing Motion to Dismiss Appellant's Jurisdictional Statement to the Supreme Court of the United States, on Seaside Properties, Inc., appellant herein, by mailing a copy thereof, in a duly addressed envelope, with Air Mail postage affixed

thereon, to Guion T. DeLoach, attorney of record for said Seaside Properties, Inc. at 311 S. W. 27th Avenue, Miami, Florida 33135.

P. A. PACYNA

SWORN TO AND SUBSCRIBED before me this 24th day of October, A. D., 1967.

NOTARY PUBLIC, STATE OF FLORIDA

My commission expires:

Notary Public, State of Florida at Large
My Commission Expires July 28, 1970
Bonded By American Fire & Casualty Co.

APPENDIX

SEASIDE PROPERTIES, INC., a Florida corporation,
Appellant,

vs.

STATE ROAD DEPARTMENT of the State of Florida and Monroe County, a subdivision of the State of Florida,
Appellees.

No. 59–155.

District Court of Appeal of Florida.

Third District.

June 6, 1960.

Guion T. DeLoach, Coral Gables, for appellant.

Bryan W. Henry, Tallahassee, Paul E. Sawyer, Key West, and Clyde G. Trammell, Jr., Tallahassee, for appellees.

CARROLL, CHAS., Judge.

This appeal is from an order granting a motion of the defendant to dismiss an amended equity complaint, and dismissing the complaint with prejudice.

The appellant, who was the plaintiff below, filed its amended complaint in the circuit court in Monroe County against the State Road Department seeking to quiet title to certain real estate consisting of a section of Old State Road 4-A which had been abandoned in favor of a newer overseas

highway. The appellant deraigned his title, and alleged that appellant and its predecessor in title have exercised possession and control of the subject property and paid taxes thereon for more than seven years; that the record discloses no title in the state or county, and that "the defendants have no chain of title by which they can claim any right, title or interest in Old State Road 4-A, a/k/a Old Dixie Highway, and that their only claim is based upon use for a period of years which terminated on or about the year 1937 upon the completion of U. S. Highway #1, which is the present Overseas Highway." It was further alleged that the State Road Department had threatened to invade certain property of plaintiff and remove and destroy certain display signs which plaintiff had placed on the property involved.

In dismissing the cause the learned chancellor was of the opinion, as recited in his order, that "this court is without jurisdiction over the subject matter of this cause as the said Defendant [State Road Department of Florida] cannot be sued in this action."

The determinative question here is whether suit to quiet title may be maintained against the State Road Department under the circumstances presented.

[1,2] It is clear that the state may not be sued without its consent. See 30 Fla. Jur., State of Florida, § 42 et seq. And it is established that a suit against the State Road Department is, in effect, a suit against the state. State ex rel. Davis v. Love, 99 Fla. 333, 126 So. 374, 377.

In contending that the trial court had jurisdiction, appellant cites and relies on the cases of State Road Department

of Florida v. Tharp, 146 Fla. 745, 1 So. 2d 868; State Road Department v. Bender, 147 Fla. 15, 2 So. 2d 298; Webb v. Giddens, Fla. 1955, 82 So. 2d 743; and State Road Department of Florida v. Darby, Fla. App. 1959, 109 So. 2d 591; in each of which suit was allowed against the road department. Those cases involved actual physical invasion of a landowner's property, or acts amounting to a taking of property without compensation therefor; and in several of them the court saw fit to compel exercise of the right of eminent domain and prosecution of condemnation proceedings. Upon such facts it was held that the state's immunity did not shield the department from suit.

[3] In the instant case, the complaint contains no allegation of actual taking or physical encroachment. The road department is charged only with having threatened to come upon appellant's property and destroy and remove certain display signs therefrom. Since the threat involved here is not such an invasion or taking of the property as those for which it was held suit against the department would lie in the above cited cases, the chancellor properly dismissed the complaint. See, as exemplary of the broad class of cases precluding suit against the state in like situations, Rabin v. Lake Worth Drainage District, Fla. 1955, 82 So. 2d 353; Weir v. Palm Beach County, Fla. 1956, 85 So. 2d 865; Spangler v. Florida State Turnpike Authority, Fla. 1958, 106 So. 2d 421; Moreno v. Aldrich, Fla. App. 1959, 113 So. 2d 406. Therefore, this suit to quiet title could not be maintained against the State Road Department unless provision therefor was made by statute.

Our attention has been directed to two statutes dealing with suits against the State Road Department in certain circumstances, §§ 337.19 and 69.17 et seq., Fla. Stat., F. S. A.

Neither gives authority to sue the State Road Department to quiet title under this amended complaint. Section 337.19 clearly is not applicable here, as it authorizes suits "against the department on any claim under contract for work done; provided, that no suit sounding in tort shall be maintained against the department."

The second statute mentioned, §§ 69.17 and 69.18 provides:

"*69.17 State named party; lien foreclosure, suit to quiet title*

"Under the conditions prescribed in this section for the protection of the state, the state may be named a party in any civil action or suit in any court in this state or any district court of the United States having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real or personal property on which the state has or claims a mortgage or other lien."

"*69.18 Same; complaint; service of process*

"The complaint shall set forth with particularity the nature of the interest or lien of the state. In actions, service upon the state shall be made by serving the process of the court with a copy of the complaint upon the state attorney or upon an assistant state attorney for the judicial circuit in which the action is brought and by sending a copy of the process and complaint by registered mail to the attorney general. In actions the state may appear and answer, plead or deny within forty days after service or further time as the court may allow."

The above quoted statute, which was §§ 1 and 2, Chapter 29724, Laws of Florida, 1955, appears to have been taken without material change from a federal statute, 28 U. S. C. A. § 2410(a) and (b). A careful reading of these statutes discloses that while they confer a waiver of immunity in suits to quiet title, the waiver in such cases is limited to those instances where the property involved is one on which the sovereign (or State Road Department) "has or claims a mortgage or other lien." That is the construction which has been placed on the similarly worded federal statute. See Wells v. Long, D. C. D. Idaho 1946, 68 F. Supp. 671, affirmed 9 Cir., 1947, 162 F. 2d 842; Ansonia National Bank of Ansonia, Conn. v. United States, D. C. D. Conn. 1956, 147 F. Supp. 864.

[4,5] In construing the statute we must give effect to its plain language. Statutes purporting to waive sovereign immunity are to be strictly construed, and such a waiver will not be implied, but must be clear and unequivocal. Spangler v. Florida State Turnpike Authority, supra, Fla. 1958, 106 So. 2d 421, 424.

[6] When a state requires, as a condition of the waiver of immunity, that the state's interest in the property involved be a mortgage or lien, the statute must be construed to refer to a mortgage or lien interest denoting a charge on property as security for the payment for some debt or obligation. In the complaint in this suit no such interest of the state or of the road department was alleged.

[7] We conclude, therefore, that the learned chancellor was eminently correct in dismissing the suit, but for reasons shown herein the dismissal should not have been one with

prejudice. The order appealed from is modified accordingly, and as so modified, is hereby affirmed.

Modified and affirmed.

HORTON, C. J., and PEARSON, J., concur.

SEASIDE PROPERTIES, INC.

v.

STATE ROAD DEPT.

No. 35964.

Supreme Court of Florida.

April 1967.

Rehearing Denied May 25, 1967.

Certiorari denied without opinion. 190 So. 2d 391.